IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1068 OF 2005

Mr. Janardhan yashwant Bhojane ... Appellant (Ori.Def.No.1)

V/s

Mr. Chandrakant Narayan Parkhe & ors. ... Respondents

Mr. Dilip Bodake for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 13TH SEPT., 2005

P.C.:

1. The appellant has filed this appeal against the judgment and order passed by the Addl. District Judge, Satara dated 18.2.2005 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Wai, dated 2.1.2003 decreeing the plaintiffs' suit for perpetual injunction.

2. I have heard the learned counsel for the appellant. Perused the record.

3. Plaintiffs filed the suit for perpetual injunction alleging that the defendants have encroached upon the

plaintiffs' property by constructing gober gas plant which caused pollution and inconvenience to the plaintiffs, besides infringement of his right to their property.

The suit summons was issued and the defendants appeared but did not file written statement and, as such, the suit proceeded without written statement against them. The suit was decreed on the basis of plaintiffs' evidence.

The appeal was carried to the Addl. District Judge, Satara. The learned Addl. District Judge, after hearing both parties dismissed the appeal and confirmed the order of the lower Court and hence the present appeal.

4. The only question sought to be raised in this appeal is that the defendant appellant's application dated 5.2.2001 seeking permission to file written statement came to be rejected and he was deprived of the opportunity to contest the suit. The record shows that inspite of the fact that the defendant was present, did not file his written statement and the order to the effect that there was no written statement and the

matter to be fixed for hearing came to be passed by the Trial Court on 24.3.1992, whereas the defendant moved the lower Court seeking permission to file written statement on 5.2.2001 i.e. about 9 years after the order came to be passed. The reason for such delay was said to be defendant's poverty and that he was working as labourer. However, on facts, the lower appellate Court has come to the conclusion that there was no sufficient ground to give any indulgence to the defendant on that count. The learned counsel for the appellant submitted that the plaint was amended in the year 2001 and he had right to file written statement to the amended plaint. However, my attention was invited to the copy of the plaint itself which shows that the amendment was only to the effect to insert the city survey number of the suit property and, therefore, it did not affect right of the appellant-defendant. Moreover, it is also pertinent to note that the appellant-defendant did no participate in the suit proceeding and in fact had opportunity to cross-examine the plaintiffs as well as to lead his own evidence which he did not. Under the circumstances, 9 years' delay should prove to be fatal as rightly observed by the learned lower appellate Court Judge, because the party cannot take advantage of their own fault.

5. In the result, there is no substantial question of law involved in the appeal and, therefore, the appeal stands dismissed with no order as to costs.

Consequently, Civil Application No. 1582 of 2005 also stands dismissed with no order as to costs.

.....